



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/548,466	04/13/2000	Mukesh Dalel	020431.0691	7441

7590 07/30/2003  
Baker Botts LLP  
2001 Ross Avenue  
Dallas, TX 75201-2980

EXAMINER

KANOF, PEDRO R

ART UNIT	PAPER NUMBER
----------	--------------

3628

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/548,466

Applicant(s)

DALEL ET AL.

Examiner

Pedro Kanof

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-94 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-94 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 3628

## **DETAILED ACTION**

### ***Response to Amendment***

1. This correspondence is in response to the amendment filed 5/7/03.
2. Claims 1, 11-15, 25-29, 41-45, and 55-58 have been amended as requested.
3. Claims 59-94 have been added as requested.
4. Claims 1-94 are rejected.

### ***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 63-92 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The rejected claims are directed to a computer program which is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and Office personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer's program functionally, as nonstatutory functional descriptive material. When a computer program is claimed in a process where the computer is executing the computer program instructions, Office personnel should treat the claim as a process claim. See paragraph IV.B.2(b) in the MPEP. When the computer program is recited in conjunction with a physical structure, such as a computer memory, Office personnel should treat the claim as a product claim. See paragraph IV.B.2(a) in the MPEP.

Art Unit: 3628

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 5-7, 11, 15, 16, 19-21, 25, 29, 30, 35-37, 45, 46, 49-51, 55, 56, 58, 63, 64, 67-69, 73, 74, 78, 79, 82-84, 88, 89, 91, and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al. (EP 0770 967) (hereafter Schmidt), in view of Herz et al. (US Patent No. 5,754,938) (hereafter Herz).

Claims 1 and 15, Schmidt discloses a method of multi-enterprise optimization at a buyer and seller computers, comprising:

accessing a forecasted demand for at least one item (Page 3, line 25-page 4, line 8);  
generating one or more proposed flexible trade contracts using the forecasted demand for the item (Page 28, lines 35-40);

communicating each proposed flexible trade contract to a seller computer ("...generates replenishment ...report...", page 20, line 50-page 30, line 41); and

executing a flexible trade contract created after acceptance of the proposed flexible trade contract at the seller computer ("...the execution started...", Page 30, line 43-page 32, line 38).

Schmidt also discloses "receiving modification of the contracts", "proposed flexible trade contracts", "created a flexible trade contract" (Page 30, lines 19-23), "evaluating a modified contract" (Page 28, line 39, and page 30, line 20), and "redefinition of requirements of the

Art Unit: 3628

contract" (Page 28, line 46), as well as "price discounts" in the framework of a negotiation (Page 51, line 55).

However, Schmidt does not explicitly disclose that those steps are made "automatically and without user input", i.e. steps are conducted automatically by the seller computer and the buyer computer.

However, Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" Col. 61, lines 18-49). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract , which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer computer in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

Claims 2 and 16: Schmidt and Herz disclose the methods of Claims 1 and 15. Schmidt also explicitly discloses wherein each proposed flexible trade contract is selected from the group consisting of a forward contract, an option contract, and a flexible forward contract (option contract, Page 28, lines 35-40).

Claim 5 and 19: Schmidt and Herz disclose the methods of Claims 2 and 16. Schmidt also discloses wherein each option contract comprises an option, the option comprising at least one parameter selected from the group consisting of a maximum quantity of the item that a seller is obligated to supply; a maximum number of item types that the seller is obligated to supply; and a maximum number of locations where the item must be provided (Page 81, lines 4-19, "...maximal inventory...").

Art Unit: 3628

Claims 6 and 20: Schmidt and Herz disclose the method of Claims 5 and 19. Schmidt also discloses wherein each option contract comprises a unit option contract, and wherein the parameter is selected from the group consisting of a maximum of one unit of the item; a maximum of one item type; and a maximum of one location (Page 81, lines 20-33).

Claim 7 and 21: Schmidt and Herz disclose the methods of Claims 5 and 19. Schmidt also discloses wherein each option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option (Page 81, line 34-page 82, line 32).

Claims 11 and 25: Schmidt and Herz disclose the methods of Claims 1 and 15. Schmidt also discloses: receiving an alternate contract term from the seller computer (Col. 50, lines 45-57); accepting the alternate contract term without user input if the alternate contract term falls within a range of acceptable contract terms (Col. 50, lines 58-60); and identifying the alternate contract term as requiring user input if the alternate contract term falls outside the range of acceptable contract terms (Col. 50, line 60-col. 51, line 15). However, Schmidt does not explicitly disclose that those steps are made "automatically and without user input", i.e. steps are conducted automatically by the seller computer and the buyer computer.

Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" (Col. 61, lines 18-49). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract , which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer computer in

Art Unit: 3628

order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

Claims 29, 30, 45, 63, 58, and 78: Schmidt discloses a supply manager for multi-enterprise optimization, comprising:

- a) a negotiation module operable to receive one or more proposed flexible trade contracts from a buyer computer (Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39 - 44);
- b) each proposed flexible trade contract reflecting a buyer's forecasted demand for at least one item )Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39 - 44);
- c) the negotiation module also operable to accept the proposed flexible trade contract to create a flexible trade contract (Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39 - 44); and
- d) an execution module operable to execute the flexible trade contract (Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39-44).

However, Schmidt does not explicitly disclose that those steps are made "automatically and without user input", i.e. steps are conducted automatically by the seller computer and the buyer computer.

Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" Col. 61, lines 18-49). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract , which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer computer in

Art Unit: 3628

order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

Claims 33, 46, 64, and 79: Schmidt and Herz disclose the methods of procurement of Claims 29, 45, 63, and 78. Schmidt also discloses wherein each proposed flexible trade contract is selected from the group consisting of a forward contract, an option contract, and a flexible forward contract (Page 28, lines 35-40).

Claims 35, 49, 67, and 82: Schmidt and Herz disclose the method of procurement of Claims 32, 46, 64, and 79. Schmidt also discloses wherein each option contract comprises an option, the option comprising at least one parameter selected from the group consisting of a maximum quantity of the item that a seller is obligated to supply; a maximum number of item types that the seller is obligated to supply; and a maximum number of locations where the item must be provided (Page 81, lines 419).

Claims 36, 50, 68, and 83: Schmidt and Herz disclose the method of Claims 35, 49, 67, and 82. Schmidt also discloses wherein each option contract comprises a unit option contract, and wherein the parameter is selected from the group consisting of a maximum of one unit of the item; a maximum of one item type; and a maximum of one location (Page 81, lines 20-33).

Claims 37, 51, 69, and 84: Schmidt and Herz disclose the method of Claims 35, 49, 67, and 82. Schmidt also discloses wherein each option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option (Page 81, line 34-page 82, line 32).

Claims 55, 56, 73, 74, 88, and 89: Schmidt and Herz disclose the procurement of Claims 29, 45, 63, and 78. Schmidt also discloses: receiving an alternate contract term from the seller computer (Col. 50, lines 45-57); accepting the alternate contract term without user input if



Art Unit: 3628

the alternate contract term falls within a range of acceptable contract terms (Col. 50, lines 58-60); and identifying the alternate contract term as requiring user input if the alternate contract term falls outside the range of acceptable contract terms (Col. 50, line 60-col. 51, line 15). However, Schmidt does not explicitly disclose that those steps are made “automatically and without user input”, i.e. steps are conducted automatically by the seller computer and the buyer computer.

Herz discloses the automatic negotiation between computers, i.e. “automatically and without user input” Col. 61, lines 18-49). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract , which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer computer in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.,

Claim 91: Schmidt and Herz anticipates the software of Claim 78, However, the references do not explicitly disclose wherein receiving one or more proposed flexible trade contracts from the buyer computer system comprises receiving one or more proposed flexible trade contracts from the buyer computer system through an intermediary. Official notice is taken that the step to negotiate through an intermediary is all and well know within the art. Therefore, it would have been obvious to use the service of an intermediary in the Schmidt and Herz invention. One would have been motivated to use the service of an intermediary, i.e. a blocker, in order to guarantee the anonymity of the operators, and/or a high standard of professionalism in

Art Unit: 3628

the real estate operations, where there are different roles and issues in the different cities, such as "sponsorization" in a new condo building in New York city, etc.

9. Claims 3, 4, 8-10, 12-14, 17, 18, 22-24, 26-28, 31-34, 38-44, 47, 48, 52-54, 57, 59-62, 66, 70-72, 75-77, 80, 81, 85-87, 90, and 92-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al. (EP 0770 967) (hereafter Schmidt) in view of Herz et al. (US Patent No. 5,754,938) (hereafter Herz), and further view of Shepherd (U.S. Patent No. 5,970,479).

Claims 3 and 17: Schmidt and Herz disclose the method of Claims 2 and 16. However, the references do not explicitly disclose wherein each forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply. Shepherd discloses such as a step (Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt method. One would have been motivated to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

Claims 4 and 18: Schmidt, Herz, and Shepherd disclose the method of Claims 3 and 17. However, Schmidt does not explicitly disclose wherein each forward contract comprises a unit forward contract, and wherein the buyer is obligated to purchase and the seller is obligated to supply a quantity of one unit of the item. Shepherd discloses such as a step (Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt and Shepherd method. One would

Art Unit: 3628

have been motivated to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

Claims 8 and 22: Schmidt, Herz, and Shepherd disclose the method of Claims 2 and 16 above. Shepherd discloses wherein each flexible forward contract comprises a total quantity of one or more items that a buyer is obligated to purchase and a seller is obligated to supply; and a plurality of subcontracts each comprising an option, each option comprising at least one parameter selected from the group consisting of a range of quantities for one item; a range of quantities for one item type; and a range of quantities for one location where the item must be provided (Col. 49, lines 27-40 and col. 50, lines 10-27). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt and Shepherd method. One would have been motivated to use such a step in order to minimize the risk.

Claims 9 and 23: Schmidt, Herz, and Shepherd disclose the method of Claims 8 and 22 above. Shepherd discloses wherein each flexible forward contract comprises a unit flexible forward contract, and wherein the total quantity is one unit and the parameter is selected from the group consisting of a range of zero to one unit for the item; a range of zero to one unit for the item type; and a range of zero to one unit for the location (Col. 55, lines 60-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt and Shepherd method. One would have been motivated to use such a step in order to minimize the risk.

Claims 10 and 24: Schmidt, Herz, and Shepherd disclose the method of Claims 8 and 22 above. Shepherd discloses wherein each flexible forward contract comprises an exercise period after the execution of the flexible forward contract during which the buyer must exercise the

Art Unit: 3628

option (Col. 55, line 65-col. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt and Shepherd method. One would have been motivated to use such a step in order to minimize the risk.

Claims 12 and 26: Schmidt and Herz disclose the method of Claims 1 and 15. However, the references do not explicitly disclose updating the forecasted demand for the item; and exercising an option in the flexible trade contract based on the updated forecasted demand. Shepherd discloses such steps (Col. 55, lines 60-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt method. One would have been motivated to use such a step in order to minimize the risk.

Claims 13, 14, 27 and 28: Schmidt and Herz disclose the method of Claims 1 and 15. However, Schmidt does not explicitly disclose calculating a penalty if a seller fails to comply with a term of the flexible trade contract nor wherein communicating each proposed flexible trade contract to the seller computer comprises communicating each proposed flexible trade contract to the seller computer through an intermediary. Shepherd discloses such steps (Col. 55, line 65-col. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt method. One would have been motivated to use such a step in order to minimize the risk.

Claims 29, 46, 64, and 79: Schmidt and Herz disclose a procurement manager for multi-enterprise optimization, comprising: a negotiation module operable to receive a forecasted demand for at least one item (Page 3, line 25-page 4, line 8), and communicate the proposed flexible trade contract to a seller computer (Page 20, line 50-page 30, line 41); and an execution

Art Unit: 3628

module operable to execute a flexible trade contract created after acceptance of the proposed flexible trade contract at the seller computer (Page 30, line 43-page 32, line 38). However, Schmidt does explicitly disclose generate one or more proposed flexible trade contracts using the forecasted demand for the item (page 30, line 17 - Page 32, line 53).

Shepherd discloses such as a step (Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt method. One would have been motivated to use such a step in order to minimize the risk.

Regarding the limitation "automatically and without user input", see above discussion in Claim 1.

Claims 31 and 32: Schmidt, Herz, and Shepherd disclose the method of procurement of Claim 29. Schmidt also discloses wherein the negotiation module receives the forecasted demand from a user, and a forecast module operable to determine the forecasted demand (Page 82, line 11-page 83, line 20, and page 84, line 21-page 87, line 50).

Claims 33, 47, 65, and 80: Schmidt and Herz disclose the method of procurement of Claims 32, 46, 64, and 79. However, the references does not explicitly discloses wherein each forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply. Shepherd discloses such as a step (Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt method. One would have been motivated to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

Art Unit: 3628

Claims 34, 48, 66, and 81: Schmidt and Herz disclose the method of procurement of Claims 33, 47, 65, and 80. Schmidt also discloses wherein each forward contract comprises a unit forward contract, and wherein the buyer is obligated to purchase and the seller is obligated to supply a quantity of one unit of the item (Page 81, lines 20-33).

Claims 38, 52, 70, and 85: Schmidt and Herz disclose the method of Claims 32, 46, 64, and 79. Schmidt also discloses wherein each flexible forward contract comprises a total quantity of one or more items that a buyer is obligated to purchase and a seller is obligated to supply; a range of quantities for one item; a range of quantities for one item type; and a range of quantities for one location where the item must be provided (Col. 96, lines 15-27). However, Schmidt does not explicitly disclose a plurality of subcontracts each comprising an option, each option comprising at least one parameter. Shepherd discloses such as a step (Col. 49, lines 27-col. 50, line 27). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt method.

Claims 39, 53, 71, and 86: Schmidt, Herz, and Shepherd disclose the procurement manager of Claims 38, 52, 70, and 85. Schmidt also discloses wherein each flexible forward contract comprises a unit flexible forward contract, and wherein the total quantity is one unit and the parameter is selected from the group consisting of a range of zero to one unit for the item; a range of zero to one unit for the item type; and a range of zero to one unit for the location (Page 66, line 18-page 67, line 50).

Claims 40, 54, 72, and 87: Schmidt, Herz, and Shepherd disclose the procurement manager of Claims 38, 52, 70, and 85. Schmidt also discloses wherein each option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option (Page 81, line 34-page 82, line 32).

Art Unit: 3628

Claims 41 and 42: Schmidt and Herz disclose the procurement of Claims 29 and 45.

Schmidt also discloses: receiving an alternate contract term from the seller computer (Col. 50, lines 45-57); accepting the alternate contract term without user input if the alternate contract term falls within a range of acceptable contract terms (Col. 50, lines 58-60); and identifying the alternate contract term as requiring user input if the alternate contract term falls outside the range of acceptable contract terms (Col. 50, line 60-col. 51, line 15).

Claims 43, 44, 57, 58, 76, 77, and 90: Schmidt and Herz disclose the method and software of procurement of Claims 29, 45, 63, 78. However, the references does not explicitly disclose tracking module operable to calculate a penalty if a seller fails to comply with a term of the flexible trade contract nor a tracking module operable to calculate a penalty if a seller fails to comply with a term of the flexible trade contract. Shepherd discloses such steps (Col. 55, line 65-col. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt method. One would have been motivated to use such a step in order to minimize the risk.

Claims 59, 60, 61, 62, 77, and 92: Schmidt, Herz, and Shepherd disclose the methods and software of procurement of Claims 1, 15, 29, 45, 63, and 79. Herz also discloses a negotiation, communicating with the seller computer system in a series of rounds in which the buyer computer system and the seller computer system successively propose one or more counter-modifications of the proposed flexible trade contract for automatic evaluation and possible acceptance to create the flexible trade contract ("...Automatically take certain actions...", means the capability to participate in more of one round of the negotiation, col. 61, lines 19-50). Therefore, it would have been obvious to one having ordinary skill in the art in the time the invention was made to utilize such as a step in the Schmidt, Herz, and Shepherd invention. One

Art Unit: 3628

would be motivated to include such as a step in order to facilitate the quickly conclusion of the negotiation,

Claim 93: Schmidt, Herz, and Shepherd disclose a system for multi-enterprise optimization at a buyer computer system, comprising:

means for accessing a forecasted demand for at least one item;

automatically and without user input subsequent to accessing the forecasted demand, generating one or more proposed flexible trade contracts using the forecasted demand for the item;

means for, automatically and without user input subsequent to generating the proposed flexible trade contracts, communicating each proposed flexible trade contract to a seller computer system to initiate an automatic collaborative negotiation over the proposed flexible trade contract with the seller computer system;

means for, automatically and without user input subsequent to communicating the proposed flexible trade contract, as part of the automatic collaborative negotiation, receiving at least one modification of the proposed flexible trade contract from the seller computer system for automatic evaluation and possible acceptance in response to communicating the proposed flexible trade contract;

means for, automatically and without user input subsequent to receiving the modification of the proposed flexible trade contract from the seller computer system, as part of the automatic collaborative negotiation, evaluating the modification to determine whether the modification is acceptable;

means for, automatically and without user input subsequent to evaluating the modification of the proposed flexible trade contract, as part of the automatic collaborative negotiation, accepting the modification if the modification is acceptable; and



Art Unit: 3628

means for, subsequent to execution of a flexible trade contract created based on the proposed flexible trade contract as a result of the automatic collaborative negotiation, taking one or more actions to perform under the executed flexible trade contract, as was discussed above in Claims 1, 15, 29, 45, 63, and 78.

Claim 94: Schmidt, Herz, and Shepherd disclose a method of multi-enterprise optimization at a buyer computer system, comprising:

- accessing a forecasted demand for at least one item;
- automatically and without user input subsequent to accessing the forecasted demand, generating one or more proposed flexible trade contracts using the forecasted demand for the item;
- automatically and without user input subsequent to generating the proposed flexible trade contracts, communicating each proposed flexible trade contract to a seller computer system to initiate an automatic collaborative negotiation over the proposed flexible trade contract with the seller computer system;
- automatically and without user input subsequent to communicating the proposed flexible trade contract, as part of the automatic collaborative negotiation, receiving at least one modification of the proposed flexible trade contract from the seller computer system for automatic evaluation and possible acceptance in response to communicating the proposed flexible trade contract;
- automatically and without user input subsequent to receiving the modification of the proposed flexible trade contract from the seller computer system, as part of the automatic collaborative negotiation, evaluating the modification to determine whether the first modification is acceptable;
- automatically and without user input subsequent to evaluating the modification of the proposed flexible trade contract, as part of the automatic collaborative negotiation, generating a first counter-modification to the modification if the modification is not acceptable;

Art Unit: 3628

automatically and without user input subsequent to generating the first counter modification to the modification, as part of the automatic collaborative negotiation, communicating the first counter-modification to the seller computer system for automatic evaluation and possible acceptance;

automatically and without user input subsequent to communicating the first counter modification, as part of the automatic collaborative negotiation, receiving at least one second counter-modification of the proposed flexible trade contract from the seller computer system for automatic evaluation and possible acceptance in response to communicating the first counter modification;

automatically and without user input subsequent to receiving the second counter modification of the proposed flexible trade contract from the seller computer system, as part of the automatic collaborative negotiation, evaluating the second counter-modification to determine whether the second counter-modification is acceptable;

as part of the automatic collaborative negotiation, communicating with the seller computer system in a series of rounds in which the buyer computer system and the seller computer system successively propose one or more further counter-modifications of the proposed flexible trade contract for automatic evaluation and possible acceptance to create a flexible trade contract based on the proposed flexible trade contract; and

subsequent to execution of the flexible trade contract created based on the proposed flexible trade contract as a result of the automatic collaborative negotiation, taking one or more actions to perform under the executed flexible trade contract, as was discussed above in Claims 1, 15, 29, 45, 63, and 78.

Art Unit: 3628

### **Response to Arguments**

10. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### **Conclusion**

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Pedro R. Kanof whose telephone number is 703-3089552. The Examiner can normally be reached Monday through Friday, 7:30 am to 4:00 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Hyung S. Sough, can be reached on 703-308-0505.

Serial Number: 09/548,466

Page 19


Art Unit: 3628

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 308-1113. Any response to this action should be mailed to: Commissioner of Patents and Trademarks Washington D. C. 20231 or faxed to:

(703)305-7687 [Official communications; including After Final communications labeled "Box AF"], and

(703) 746-8177 [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"] Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.

PRK, 7/12/06.

  
HYUNG SOUH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600